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10/687,215	10/15/2003	Mary G. Dowling	CISCO-8437	8067

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EXAMINER

WILSON, ROBERT W

ART UNIT	PAPER NUMBER
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2616

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/687,215	Applicant(s) DOWLING, MARY G.	
	Examiner Robert W. Wilson	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 58-126 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 & 58-126 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. Claims 65-77 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Referring to claim 65, 77, what is meant by “presenting to a user a list of the candidate network devices qualified to join the cluster prior to said adding”?

Referring to claim 66, what is meant by “presenting to a user a list of the first candidate network devices qualified to join the cluster”?

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 121-126 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Referring to claims 121, 122, & 125, the claims are directed to a program storage device which is readable by a machine tangibly embodying a program of instructions. The format of these claims is not correct. In order to be statutory the applicant needs to claim A computer readable medium which stores instructions which are executable on a computer in which said instructions perform the method comprising:

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1 & 58-65 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,636,499 in view of U.S. Patent No. 6,046,992.

Referring to claim 1 of the instant application, claim 1 of U.S. Patent No. 6,636,499 teaches: receiving or detecting and adding. Claim 1 of U.S. Patent No. 6,636,499 does not expressly call for: configuring. US. Patent No.: 6,046,992 teaches: Attach configure (attach confirm per col. 5 lines 33 to 67 or configuring)

It would have been obvious to one of ordinary skill in the art at the time of the invention to add the configuration of U.S. Patent No.: 6,046,992 to the receiving and adding in order to provide a response to the request.

Claims 66-77 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 35 of U.S. Patent No. 6,636,499.

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Referring to claim 66 of the instant application is broader than claim 35 of U.S. Patent No. 6,636,499 because it is a method claim whereas claim 66 is program storage device claim. Even though claim 66 of U.S. Patent No.: 6,636,499 is broader it would have been obvious to perform the step in software because a method requires a processor and memory in order to execute software instructions in order to perform a method.

Claims 78-80 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,636,499.

Referring to claim 78 of the instant application, claim 1 of U.S. Patent No. 6,636,499 teaches: receiving or detecting and adding. Claim 1 of U.S. Patent No. 6,636,499 does not expressly call transmitting and processing. It would have been obvious to one of ordinary skill in the art at the time of the invention that the inverse of receiving which is transmitting and processing must be performed in order for receiving to occur in a system.

Claims 81-87 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 25 of U.S. Patent No. 6,636,499.

Referring to claim 81 of the instant application, claim 25 of U.S. Patent No. 6,636,499 teaches: means. Claim 81 of U.S. Patent No. 6,636,499 does not expressly logic. It would have been obvious to one of ordinary skill in the art at the time of the invention to implement means in logic.

Claims 88-91 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 25 of U.S. Patent No. 6,636,499.

Referring to claim 88 of the instant application, claim 25 of U.S. Patent No. 6,636,499 teaches: means. Claim 88 of U.S. Patent No. 6,636,499 does not expressly logic. It would have been obvious to one of ordinary skill in the art at the time of the invention to implement means in logic.

Claims 96-98 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 25 of U.S. Patent No. 6,636,499.

Referring to claim 96 of the instant application, claim 25 of U.S. Patent No. 6,636,499 teaches: means. Claim 25 of U.S. Patent No. 6,636,499 does not expressly logic.

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It would have been obvious to one of ordinary skill in the art at the time of the invention to implement means in logic.

Claims 99-107 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 25 of U.S. Patent No. 6,636,499.

Referring to claim 99 of the instant application, claim 25 of U.S. Patent No. 6,636,499 teaches: means. Claim 25 of U.S. Patent No. 6,636,499 does not expressly logic

It would have been obvious to one of ordinary skill in the art at the time of the invention to implement means in logic.

Claims 108-117 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 25 of U.S. Patent No. 6,636,499.

Referring to claim 108 of the instant application, claim 25 of U.S. Patent No. 6,636,499 teaches: logic. Claim 25 of U.S. Patent No. 6,636,499 does not expressly call for means

It would have been obvious to one of ordinary skill in the art at the time of the invention to implement logic as means.

Claims 118-120 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 25 of U.S. Patent No. 6,636,499.

Referring to claim 118 of the instant application, claim 25 of U.S. Patent No. 6,636,499 teaches: logic and receiving. Claim 25 of U.S. Patent No. 6,636,499 does not expressly call for means and transmitting It would have been obvious to one of ordinary skill in the art at the time of the invention to implement transmitting and with means because a system must be able to transmit as well as receive.

Claim 121 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 31 of U.S. Patent No. 6,636,499.

Claim 121 of the instant application is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 31 of U.S. Patent No. 6,636,499 Referring to claim 121 of the instant application is broader than claim 31 of U.S. Patent No. 6,636,499. Even though claim 31 of U.S. Patent No.: 6,636,499 is broader it would have been obvious to eliminated a step.

Claims 122-124 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 66 of U.S. Patent No. 6,636,499.

Claim 122 of the instant application is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 35 of U.S. Patent No. 6,636,499. Referring to claim 66 of the instant application is broader than claim 35 of U.S. Patent No. 6,636,499 because

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it is a method claim whereas claim 122 is program storage device claim. Even though claim 66 of U.S. Patent No.: 6,636,499 is broader it would have been obvious to perform the step in software because a method requires a processor and memory in order to execute software instructions in order to perform a method. .

Claims 125-126 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 78 of U.S. Patent No. 6,636,499.

Claim 125 of the instant application is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,636,499. Referring to claim 125 of the instant application is broader than claim 1 of U.S. Patent No. 6,636,499 because it is a method claim whereas claim 122 is program storage device claim. Even though claim 125 of U.S. Patent No.: 6,636,499 is broader it would have been obvious to perform the step in software because a method requires a processor and memory in order to execute software instructions in order to perform a method. .

Claim Objections

5. Claims 81-98 are objected to because of the following informalities:
Referring to claim 81, 86, 88, 91, 92, 93, 96, & 97; the examiner objects to the usage of “adapted to” because it can be interpreted as optional or intended use. The examiner requests that the applicant either amend the claims to delete adapted to or clarify on the record the meaning of “adapted to”. Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 58-80 & 122-126 are rejected under 35 U.S.C. 102(E) as being anticipated by Meier (U.S. Patent No.: 6,046,992)

Referring to claim 1, Meier teaches: A method for discovering and configuring network devices into a cluster said method (Fig 1 performs the method) comprising:

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automatically detecting candidate devices by receiving discovery packets from the candidate devices, the candidate devices periodically transmitting the discovery packets (Root receives Attach request or discovery packet per col. 5 line 36 to 67

determining whether any of the candidate devices is qualified to join the cluster by applying qualification rules to the discovery packet received from the candidate devices (Root only receives Attach request from terminals which are either unattached or detached or rule per col. 3 lines 25 to col. 4 line 67) and

adding one or more of the candidate devices to the cluster to be managed and configured via a commander network device of the cluster (The root (commander network device) adds the terminal or candidate to the spanning tree or cluster by sending Attach confirm per col. 5 line 33 to 67)

In addition Meier teaches:

Regarding claim 58 wherein the candidate network device transmit the discovery packet to a multicast address (col. 12 line 57)

Regarding claim 59, wherein the discovery packets comprise layer 2 messages (MAC col. 9 lines 21 to 55)

Regarding claim 60 wherein the discovery packets comprise Media Access Control (MAC) layer message (MAC col. 9 lines 21 to 55)

Regarding claim 61, wherein the discovery packets include cluster-capability information of the candidate device transmitting the discovery packets (attach request only sent if terminal or candidate unattached or detached)

Regarding claim 62 wherein the discovery packet includes candidat3 device is not an active member of another cluster (attach request only sent if terminal or candidate unattached or detached)

Regarding claim 64, further comprising transmitting in response to said adding the information about the neighbor candidate information to the commander network device form each member network which just joined the cluster (Child List per col. 12 lines 63 to 67)

Regarding claim 65, presenting to a user list of the candidate network devices qualified to join the cluster prior to said adding (Hello request are sent to terminals and bridges which are unattached or detached or qualified to join)

Referring to claim 66, Meier teaches: a method for discovering candidate network devices to be configured into a cluster of a network devices and managed via a commander network device said method (Fig 1 performs the method) comprising:

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automatically detecting at the commander network device first candidate network devices by receiving discover packets from the candidate network device directly connected to the commander network device the candidate network devices periodically transmitting the discovery packets the discover packets including information indicting that the candidate is capable of belonging to a cluster packets (Root receives Attach request or discovery packet from terminals in between or bridges in between or devices directly connected per col. 5 line 36 to 67

presenting to a user a list of the first candidate network device quality to join the cluster (The Attach request is sent to DETACHED terminals or bridges or candidates or list of candidates per col. 13 line 9 to col. 14 line 35)

In addition Meier teaches:

Regarding claim 67 wherein the discovery packets comprise Media Access Control (MAC) layer message (MAC col. 9 lines 21 to 55)

Regarding claim 68 wherein the discovery packet includes candidat3 device is not an active member of another cluster (attach request only sent if terminal or candidate unattached or detached)

Regarding claim 69, further comprising: storing the information received from the candidate network device in a database of the commander network device (root has routing table per col 6 lines 38 to 67)

Regarding claim 70, maintaining at each of the candidate network devices a neighbor device database containing information about other candidate network device directly connected to the candidate network device (routing table per col 6 lines 38 to 67)

Regarding claim 71, further comprising: storing the information received from the candidate network device in a database of the commander network device (routing table per col. 6 lines 38 to 67)

Regarding claim 72, further comprising adding one or more of the first candidate network devices to the cluster each of the added first candidate devices becoming a member of the cluster routing (table per col 6 lines 38 to 67)

Regarding claim 73, further comprising transmitting in response to said adding the information about the neighbor candidate information to the commander network device form each member network which just joined the cluster (Child List per col. 12 lines 63 to 67)

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Regarding claim 74, wherein the neighbor device database information is transmitted using user data gram protocol (can also be transmitted using TCP which UDP is inherently part of per col. 10 lines 45 to 67)

Regarding claim 74, further comprising automatically detecting at the commander network device second candidate network devices connected to the member network device which just joined the cluster by receiving the neighbor device database information from the member network device (Child List per col. 12 lines 63 to 67)

Regarding claim 76 storing the received neighbor device database information in a database of the commander network device (routing table per col 6 lines 38 to 67)

Regarding claim 77, further comprising presenting a user a list of the first and second candidate network device qualified to join the cluster (Hello request are sent to terminals and bridges which are unattached or detached or qualified to join)

claim 78 a method for discovering candidate network device to be configured into a cluster of network devices and managed via a commander network device (Fig 1 performs the method), said method comprising:

periodically transmitting discovery packets form the candidate network devices the discover packets including information indicating that the candidate device is capable of belonging to a cluster (Terminal transmits Attach request or discovery packet indicating that the terminal or candidate network device is capable of belonging to the spanning tree or cluster per col. 5 line 36 to 67

maintaining at each candidate network device a neighbor database containing information about other candidate network devices directly connected to the candidate network device (Each terminal keeps a Child list or other network devices directly connected to the terminal or candidate device per col. 12 lines 64 to 67) and

transmitting the information in the neighbor device data base to the commander network device when the candidate network device is added to the cluster (Child list is forwarded to root as a part of attach request per col. 12 lines 64 to 67) and

In addition Meier teaches:

Regarding claim 79, further comprising receiving at each candidate network device the discover packets form it neighbor candidate device and updating at each candidate network device the neighbor device database in response to the received discovery packets (col. 6 line 46 to 67)

Regarding claim 80, wherein the discovery packets comprise layer 2 messages (MAC col. 9 lines 21 to 55)

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Claim 121, Meier teaches: a program storage device readable by a machine tangibly embodying a program of instructions executable by the machine (Reference teaches that all of these method steps below are performed by software in MAC layer, Logical Link Control Layer and Network Layer per col. 9 line 20 to col. 10 line 67 which is contained in the root, bridge, and terminal and in order to be executed it would have to inherently stored in a memory on the root, bridge, and terminal) to perform a method for discovering and configuring network devices into a cluster said method comprising:

automatically detecting candidate devices by receiving discovery packets from the candidate devices, the candidate devices periodically transmitting the discovery packets (Root receives Attach request or discovery packet per col. 5 line 36 to 67

determining whether any of the candidate devices is qualified to join the cluster by applying qualification rules to the discovery packet received from the candidate devices (Root only receives Attach request from terminals which are either unattached or detached or rule per col. 3 lines 25 to col. 4 line 67) and

adding one or more of the candidate devices to the cluster to be managed and configured via a commander network device of the cluster (The root (commander network device) adds the terminal or candidate to the spanning tree or cluster by sending Attach confirm per col. 5 line 33 to 67)

claim 122. A program storage device readable by a machine tangibly embodying a program of instructions executable by a machine (Reference teaches that all of these method steps below are performed by software in MAC layer, Logical Link Control Layer and Network Layer per col. 9 line 20 to col. 10 line 67 which is contained in the root, bridge, and terminal and in order to be executed it would have to inherently stored in a memory on the root, bridge, and terminal) to perform a method for discovering and configuring network devices into a cluster said method comprising

automatically detecting at the commander network device first candidate network devices by receiving discover packets from the candidate network device directly connected to the commander network device the candidate network devices periodically transmitting the discovery packets the discover packets including information indicating that the candidate is capable of belonging to a cluster (Root receives Attach request or discovery packet from terminals in between or bridges in between or devices directly connected per col. 5 line 36-67)

presenting to a user a list of the first candidate network device quality to join the cluster (The Attach request is sent to DETACHED terminals or bridges or candidates or list of candidates per col. 13 line 9 to col. 14 line 35)

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In Addition Meier teaches:

Regarding claim 123, method further comprises: adding one or more of the first candidate network device to the cluster each of the added first candid devices becoming a member of the cluster (The root (commander network device) adds the terminal or candidate to the spanning tree or cluster by sending Attach confirm per col. 5 line 33 to 67)

Regarding claim 124, said method further comprises: storing the information received from the candidate network devices in a database of the commander network device (routing table per col. 6 lines 38 to 67)

claim 125 a program storage device readable by a machine tangibly embodying a program of instructions executable by the machine (Reference teaches that all of these method steps below are performed by software in MAC layer, Logical Link Control Layer and Network Layer per col. 9 line 20 to col. 10 line 67 which is contained in the root, bridge, and terminal and in order to be executed it would have to inherently stored in a memory on the root, bridge, and terminal) to perform a method for discovering candidate network devices to be configured into a cluster of network devices and managing via a commander network device said method comprising,

periodically transmitting discovery packets form the candidate network devices the discover packets including information indicating that the candidate device is capable of belonging to a cluster (Terminal transmits Attach request or discovery packet indicating that the terminal or candidate network device is capable of belonging to the spanning tree or cluster per col. 5 line 36 to 67)

maintaining at each candidate network device a neighbor database containing information about other candidate network devices directly connected to the candidate network device (Each terminal keeps a Child list or other network devices directly connected to the terminal or candidate device per col. 12 lines 64 to 67) and

transmitting the information in the neighbor device data base to the commander network device when the candidate network device is added to the cluster (Child list is forwarded to root as a part of attach request per col. 12 lines 64 to 67) and

In addition Meier teaches:

Regarding claim 126, wherein said method further comprises:

Receiving at each of the candidate network devices the discovery packets from its neighbor candidate device and updating at each of the candidate network devices the neighbor device database n response to the received discovery packets (col. 6 lines 38 to 67)

IDS

7. Please note that not all of the IDS reference could be signed off because they were not available with the case. Please resubmit this reference if you wish for them to be considered.


Also the non-patent literature section of the IDS was objected to because not all of the published dates were present on the document list. Please add any missing published dates upon resubmission of IDS documents

Conclusion

8. inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Wilson whose telephone number is 571/272-3075. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. VU can be reached on 571/272-73155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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Examiner
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